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CLERK US DISTRICT COURT
NORTHERN DIST. OF TX
FILED

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

2014 OCT 15 AM 9:02
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DEPUTY CLERK

TOMMY LEE STEWARD,
Plaintiff,

v.

KAUFMAN COUNTY, TEXAS
Defendant.

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3-14CV-3685M

CIVIL ACTION NO. _____

PLAINTIFF'S ORIGINAL COMPLAINT

COMES NOW, Plaintiff and for cause of action would show the Court as follows:

PARTIES

1.1. Plaintiff TOMMY LEE STEWARD is a resident in Terrell, Kaufman County, Texas.

DEFENDANT

2.1. Defendant KAUFMAN COUNTY, TEXAS is a local government unit which is operating under the laws of the State of Texas. This Defendant has a right to sue and to be sued in its own name and stead.

SERVICE AND PROCESS

3.1. Defendant KAUFMAN COUNTY, TEXAS may be served by serving the Honorable Bruce Wood, Kaufman County Judge service of process at Kaufman County Courthouse, 100 West Mulberry, Kaufman, Texas 75142.

JURISDICTION AND VENUE

3.1 A common nucleus of operative facts exists within Kaufman County, Texas.

3.2. Venue is properly set in the United States District Court in the Northern District of Texas located in Dallas, Texas.

3.3. Venue in the captioned District Court pursuant to 28 U.S.C stems from the fact that the acts or omissions giving rise to the claims occurred in the judicial district of the captioned District Court.

3.4. This action is brought pursuant to 42 U.S.C. § 1983 for violations of the Fourteenth Amendment to the United States Constitution. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1331, *et seq.*

FACTS

4.1. On or about December 16, 2013, the Honorable Howard Tygrett, presiding Judge of the 86th Judicial District Court, Kaufman County, Texas, dismissed Cause No. 59484, styled *State of Texas vs. \$3,780.00*. Defendant Kaufman County, Texas filed the aforementioned seizure and forfeiture action pursuant to Texas Code of Criminal Procedure Article 59.04 in an effort to forfeit Plaintiff's assets.

4.2. In addition to the authority conferred by the aforementioned criminal statute, Kaufman County, Texas has a policy and practice of seizing assets (vehicles, money, property) from individuals that it believes might be illegal contraband and forfeiting ownership of those assets to its ownership.

4.3. The policy authorized and utilized by Kaufman County, Texas involves receiving the alleged contraband from law enforcement officers and retaining those items in its possession until it is able to establish that seized property is actually contraband.

4.2. As a result of this dismissal, on the aforementioned date, Kaufman County, Texas failed to meet its burden of establishing that Plaintiff's assets (\$3,780) were illegal contraband and no longer has authority to retain Plaintiff's money. Nevertheless, after continued requests for the return of his money, Defendant Kaufman County, Texas refuses to relinquish the assets and retains the money in its possession.

4.2. The Defendant Kaufman County has a policy and practice to initiate seizure and forfeiture actions against the asset(s) of individuals if it believes such originates from alleged criminal activity. Such authority is conveyed upon the Defendant pursuant to Texas Criminal of Criminal Procedure 59.04.

CLAIMS PURSUANT TO 42 U.S.C §§ 1983 AND 1988

5.1. At all material times hereto, Defendant Kaufman County, Texas was acting under the color of State law.

5.2. At all material times hereto, Plaintiff had a constitutionally protected right against the taking of his property without due process as provided by the Fourteenth Amendment of the Constitution of the United States.

5.3. The acts and omissions of the Defendant constitute a pervasive pattern of deliberate indifference and/or wanton and willful misconduct in regards to the rights of Plaintiff. The Defendant was aware that it failed to establish its interest in Plaintiff's property and failed to immediately return Plaintiff's property that it had illegally retained by color of State law.

5.4. The Defendants unlawfully appropriated and secured the Plaintiff's personal property in the amount of \$3,780.00;

5.5. The rights of due process before the taking of an individual's personal assets are long-standing rights and were clearly established at all times relevant.

5.6. The Fourteenth Amendment violations committed by Defendant Kaufman County, Texas are the moving force(s) that caused the damages of the Plaintiff. By reason of all the foregoing allegations, Plaintiff is entitled to an award of damages against the Defendant Kaufman County, Texas for his damages including economic and non-economic damages, and punitive damages under federal common law and 42 U.S.C. § 1983 and for his costs and reasonable attorney fees pursuant to 42 U.S.C. § 1988.

NO CONTRIBUTORY FAULT

6.1. Plaintiff committed no act which would have contributed to the unconstitutional actions of Defendant's continued taking of his property.

DAMAGES

7.1 As a result of the unconstitutional actions of the Defendant Kaufman County, Texas, the Plaintiff has suffered the following damages and losses:

- A. Loss of assets in the amount of \$3,780.00,
- B. Intangible damages in the form of emotional pain and suffering (past and future),
- C. Attorney's fees pursuant to 42 U.S.C. § 1988, for deprivation of his civil rights as alleged above, and
- D. Punitive damages
- E. Costs of Court.

PRAYER

8.1. **WHEREFORE, PREMISES CONSIDERED**, TOMMY LEE STEWARD respectfully prays for judgement against KAUFMAN COUNTY, TEXAS as follows:

- A. A judgment against the Defendant Kaufman County, Texas for all economic and non-economic damages allowable under law and in such reasonable sum as shall be established at the time of trial,
- B. For costs, reasonable and statutory attorney fees, and other relief as established by law,
- C. For damages pursuant 42 U.S.C. § 1983 and § 1988, including an award of punitive damages, costs and attorney's fees;
- D. For such other further relief as the Court deems fair and equitable under the circumstances of this case.

Respectfully submitted,
LAW OFFICES OF HOUSTON M. SMITH P.C.
210 East Moore Avenue
Terrell, Texas 75160
(972) 524-1903 Office
(972) 524-1992 Fax

BY: /s/Houston M. Smith
HOUSTON M. SMITH
Texas Bar No.: 18605900
E-mail address: hms@houstonMsmith.com
ATTORNEY FOR PLAINTIFF

3-14CV-3685M

CIVIL COVER SHEET

JS 44 (Rev. 09/11)

The JS 44 civil coversheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Tommy Lee Steward

DEFENDANTS

Kaufman County, Texas

(b) County of Residence of First Listed Plaintiff Kaufman
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Kaufman
(IN U.S. PLAINTIFF CASES ONLY)

NOTE:

IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)
Houston M. Smith, Law Offices of Houston M. Smith
210 East Moore Avenue, Terrell, Texas 75160

Attorneys (If Known)
Honorable Erleigh Norville-Wiley
100 West Mulberry
Kaufman, Texas 75142

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. Section 1983, 14th Amendment of United States Constitution

Brief description of cause:

Unconstitutional taking of personal property, namely monetary assets

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

3,780.00

CHECK YES only if demanded in complaint:

JURY DEMAND:

☒ Yes ☐ No**VIII. RELATED CASE(S)**

PENDING OR CLOSED:

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

/s/ Houston M. Smith

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE